

## HOUSE BILL NO. 631

INTRODUCED BY A. BLEWETT

A BILL FOR AN ACT ENTITLED: "AN ACT INCREASING THE CREDIT ALLOWED FOR THE REHABILITATION OF HISTORIC BUILDINGS UNDER THE CORPORATION LICENSE TAX AND INDIVIDUAL INCOME TAX FROM 25 PERCENT TO 100 PERCENT OF THE FEDERAL CREDIT; PROVIDING THAT THE TAX CREDIT MAY BE TRANSFERRED TO ANOTHER PERSON; REQUIRING THE DEPARTMENT OF REVENUE AND THE STATE HISTORIC PRESERVATION OFFICE TO DEVELOP PROCEDURES FOR ENSURING THE VALIDITY OF THE TRANSFER; AMENDING SECTIONS 15-30-180 AND 15-31-151, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

**Section 1.** Section 15-30-180, MCA, is amended to read:

**"15-30-180. (Temporary) Credit for preservation of historic property -- transfer of credit.** (1) There is allowed as a credit against the taxes imposed by 15-30-103 ~~a percentage equal to:~~

(a) the amount of the credit allowed for qualified rehabilitation expenditures with respect to any certified historic building located in Montana as provided in 15-31-151; or

(b) the amount of the credit transferred to the taxpayer, as transferee, as provided in 15-31-151.

(2) A taxpayer entitled to claim the credit under subsection (1)(a) may transfer the credit to another taxpayer as transferee as provided in 15-31-151.

~~(2)(3)~~ (a) As an alternative to the credit allowed in subsection (1), there is allowed as a credit against the taxes imposed by 15-30-103 an amount equal to 20% of the cost of creating the conservation easement and the diminution in the value of a historically significant property, including buildings and structures, that may result from a contract that places a conservation easement on the property if:

(i) the conservation easement holder is a qualified private organization as defined in 76-6-104;

(ii) the owner of the property is obligated by the contract creating the easement to maintain and preserve the property to retain its historical significance and characteristics for a period of not less than 29 years; and

(iii) the state historic preservation officer, provided for in 2-15-1512, verifies that a property is listed on the national register of historic places or that the property is historically valuable.

(b) For the purposes of this section, property is historically valuable if the property has, as certified by the state historic preservation office, significant qualities reflecting American history, architecture, engineering, or culture that was achieved prior to the last 50 years and the property possesses integrity of location, design, setting, materials, and workmanship and:

(i) is associated with events that have made a significant contribution to the broad patterns of Montana's or the nation's history;

(ii) is associated with the lives of persons significant in ~~our~~ the state's past;

(iii) embodies the distinctive characteristics of a type, period, or method of construction, represents the work of a master, possesses high artistic values, or represents a significant and distinguishable entity whose components may lack individual distinction; or

(iv) has yielded, or may be likely to yield, information important in history.

(c) In addition to any of the tax credit allowed in subsection ~~(2)(a)~~ (3)(a), the owner of a historically significant property, including buildings and structures, that is the subject of a conservation easement contract may take as a credit against the taxes imposed by 15-30-103 an amount equal to 20% of the amount spent by the owner for the direct cost of the protection and the preservation of the property if the preservation efforts are approved as reasonable and necessary by the conservation easement holder. The tax credit may not exceed \$25,000 a year.

~~(3)(4)~~ The maximum tax credit that may be taken under subsection ~~(2)~~ (3) for each historically significant property is \$150,000.

~~(4)(5)~~ The credit allowed by subsection ~~(2)~~ (3) may not be refunded if the taxpayer has a tax liability less than the amount of the credit. If the sum of credit carryovers from the credit, if any, and the amount of credit allowed by subsection ~~(2)~~ (3) for the tax year exceed the taxpayer's tax liability for the current tax year, the excess attributable to the current tax year's credit is a credit carryover to the 6 succeeding tax years. The entire amount of unused credit must be carried forward to the earliest of the succeeding years, and the oldest available unused credit must be used first.

~~(5)(6)~~ A person may not take a credit against taxes due in any 1 year under both subsection (1) and ~~(2)~~ (3).

~~(6)(7)~~ The credit allowed in subsection (1)(a) may not be allocated between spouses unless the property is used by a small business corporation or a partnership in which they are shareholders or partners. (Terminates December 31, 2011--sec. 3, Ch. 538, L. 2001.)

1           **15-30-180. (Effective January 1, 2012) Credit for preservation of historic buildings -- transfer of**  
2 **credit.** (1) There is allowed as a credit against the taxes imposed by 15-30-103 ~~a percentage equal to:~~

3           (a) the amount of the credit allowed for qualified rehabilitation expenditures with respect to any certified  
4 historic building located in Montana as provided in 15-31-151; or

5           (b) the amount of the credit transferred to the taxpayer, as transferee, as provided in 15-31-151.

6           (2) The credit allowed under subsection (1)(a) may not be allocated between spouses unless the  
7 property is used by a small business corporation or a partnership in which they are shareholders or partners."

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9           **Section 2.** Section 15-31-151, MCA, is amended to read:

10           **"15-31-151. Credit for preservation of historic buildings -- transfer of credit.** (1) (a) There is allowed  
11 as a credit against the taxes imposed by 15-31-101, 15-31-121, and 15-31-122 ~~a percentage~~ an amount of the  
12 credit allowed for qualified rehabilitation expenditures; with respect to any certified historic building located in  
13 Montana; as provided in 26 U.S.C. 47 ~~or as that section may be renumbered or amended.~~

14           (b) ~~(i) The~~ Except as provided in subsection (1)(b)(ii), the amount of the credit allowed for a tax year is  
15 25% of the amount of the credit determined under 26 U.S.C. 47(a)(2) ~~or as that section may be renumbered or~~  
16 ~~amended.~~

17           (ii) For the rehabilitation of a certified historic building for which the taxpayer has received a final  
18 certification of completed work from the United States secretary of the interior in tax years beginning after  
19 December 31, 2008, the amount of the credit allowed for a tax year is equal to the amount of the credit  
20 determined under 26 U.S.C. 47(a)(2).

21           (2) The credit allowed by this section may not be refunded if the taxpayer has a tax liability less than the  
22 amount of the credit. If the sum of credit carryovers from the credit, if any, and the amount of credit allowed by  
23 this section for the tax year exceeds the taxpayer's tax liability for the current tax year, the excess attributable to  
24 the current tax year's credit is a credit carryover to the 7 succeeding tax years. The entire amount of unused credit  
25 must be carried forward to the earliest of the succeeding years, and the oldest available unused credit must be  
26 used first.

27           (3) If the credit under this section is claimed by a small business corporation, as defined in 15-30-1101,  
28 or a partnership, the credit must be attributed to shareholders or partners, using the same proportion used to  
29 report the corporation's or partnership's income or loss for Montana income tax purposes.

30           (4) (a) A taxpayer entitled to claim the tax credit under this section may sell, assign, convey, or otherwise

1 transfer the tax credit to another taxpayer, as transferee, to apply as a credit against the taxes imposed by  
2 15-30-103 or by 15-31-101, 15-31-121, and 15-31-122 as provided in subsections (1) through (3) of this section.

3 (b) (i) The taxpayer may transfer only the amount of the tax credit that the taxpayer has not applied  
4 against the taxes imposed by 15-30-103 or by 15-31-101, 15-31-121, and 15-31-122.

5 (ii) The taxpayer may transfer a pro rata portion of the tax credit to more than one transferee.

6 (c) (i) The taxpayer shall enter into a written purchase agreement with the transferee that specifies the  
7 terms and conditions of the transfer of the credit. The taxpayer and the transferee shall, within 90 calendar days  
8 following the effective date of the transfer, notify the department and the state historic preservation office,  
9 provided for in 2-15-1512, in writing of the transfer and shall provide any information required by the department  
10 and the state historic preservation office to verify the amount of the tax credit that is being transferred.

11 (ii) The department shall develop, in conjunction with the state historic preservation office, a system for  
12 recording the transfer of tax credits allowed under this subsection (4) that permits the verification of the validity  
13 of the transfer of the tax credit.

14 (d) For any tax year in which a tax credit is transferred pursuant to this subsection (4), the taxpayer and  
15 the transferee shall file a written statement with their income tax returns that specifies the amount of the tax credit  
16 that has been transferred. A transferee is not entitled to a credit under this subsection (4) unless the taxpayer's  
17 written statement verifies the amount of the transfer of the tax credit.

18 (e) (i) Any consideration received by the taxpayer for the transfer of the tax credit may not be included  
19 in adjusted gross income under Title 15, chapter 30, or in gross corporate income under this part.

20 (ii) Any consideration paid by the transferee for the transfer of the tax credit may not be deducted from  
21 adjusted gross income in computing taxable income under Title 15, chapter 30, or from gross corporate income  
22 in computing net income under this chapter.

23 (f) (i) Except as provided in subsection (4)(f)(ii), a transferee may not sell, assign, or otherwise transfer  
24 the credit purchased under the purchase agreement.

25 (ii) The tax credit may be transferred to a successor entity of the transferee resulting from a change in  
26 ownership, merger, or bankruptcy of the transferee's business."

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28 NEW SECTION. Section 3. Effective date. [This act] is effective on passage and approval.

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30 NEW SECTION. Section 4. Retroactive applicability. [This act] applies retroactively, within the

1 meaning of 1-2-109, to tax years beginning after December 31, 2008.

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